IN THE HIGH COURT OF JUDICATURE OF BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 6344 of 2004

Sou.Indubai A. Khade & ors. .. Petitioners

versus

Shri D.R. Patil and others .. Respondents

...

Ms.Leena Patil i/b Mr.P.M. Pradhan for the petitioners

CORAM : D.G. KARNIK, J

DATED : 16th February 2006.

P.C.:

1. By this petition, the petitioners challenge the judgement and order dated 31st January 2004 passed by the learned Civil Judge, Sr. Division, Kolhapur dismissing the application for condonation of delay in making an application for restoration under Order IX Rule 13 of the Code of Civil Procedure.

2. The petitioners have filed a suit against the respondents in the year 1994. The suit was dismissed in default for appearance of the petitioners on 14th

October 1998. Restoration application was filed after lapse of nearly 46 months on 13th August 2002 with an application for condonation of delay. The learned Judge has held that there was no sufficient cause for condonation of delay and therefore, has dismissed the delay condonation application.

3. Application for restoration was filed after 46 months i.e. there was a long long delay of 46 months. Delay was not sufficiently explained. It is alleged that petitioner nos.1, 2 and 3 were all old persons aged more than 75 years and they were ill from time to time and therefore, the delay. The petitioner nos.4, 5 and 6 are not old. They are all mature adults in their fifties. Nothing has been explained why they were not attending the suit nor any explanation is given why could not file an explanation within time. It appears that the petitioner wants to take advantage of old age/sickness of petitioner nos.1, 2 and 3 in covering the negligence of petitioner nos.4, 5 and 6. The cause for all the petitioners was common and petitioner nos.4, 5 and 6 could have easily filed an application for restoration.

4. For these reasons, petition is rejected.

(D.G. KARNIK, J)